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**Attorneys for Defendant
RECEIVABLES PERFORMANCE
MANAGEMENT, LLC**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOSHUA HALL,
Plaintiff,
vs.
RECEIVABLES PERFORMANCE
MANAGEMENT, LLC,
Defendant.

Case No: 13-CV-0805 BEN RBB

**DEFENDANT'S ANSWER TO
COMPLAINT; AND**

DEMAND FOR JURY TRIAL

Complaint Filed: April 4, 2013
Trial Date: TBD

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Defendant RECEIVABLES PERFORMANCE MANAGEMENT, LLC (“Defendant”) hereby responds on behalf of itself, and no other, to the Complaint of Plaintiff JOSHUA HALL (“Plaintiff”) as follows:

1. Pursuant to Rule 8(b)(3) of the Federal Rules of Civil Procedure, Defendant generally denies each and every allegation contained in the complaint except those expressly admitted below.

2. Defendant admits the allegations of paragraphs: 8, 11, and 14.

PRAYER FOR RELIEF

Defendant denies that Plaintiff is entitled to any of the items set forth in the prayer for relief.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Bona Fide Error)

Plaintiff's claims are barred as against Defendant by 15 U.S.C. § 1692k(c) and California Civil Code 1788.30(c).

Second Affirmative Defense

(Preemption)

Plaintiff's state law claims are barred as against Defendant by federal statutes, including 15 U.S.C. § 1692 et seq.

Third Affirmative Defense

(Exhaustion of Administrative Remedies)

Plaintiff's Complaint is barred due to his failure to exhaust his administrative remedies.

Fourth Affirmative Defense

(Improper Request for Statutory Damages)

Plaintiff's Complaint does not allege facts sufficient to rise to the level of conduct required to recover statutory damages under Civil Code § 1788.30 and thus all requests for statutory damages there under are improper.

1 **Fifth Affirmative Defense**

2 (Statute of Limitations)

3 Defendant is informed and believes and thereon alleged that the applicable statutes
4 of limitation bar all claims for relief in the Complaint.

5 **Sixth Affirmative Defense**

6 (Contributory/Comparative Fault)

7 Defendant is informed and believes and thereon alleges that any alleged damages
8 sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff and resulted
9 from Plaintiff's own negligence, which equaled or exceeded any alleged negligence or
10 wrongdoing by Defendant.

11 **Seventh Affirmative Defense**

12 (Failure to Mitigate)

13 The damages claimed by Plaintiff could have been mitigated with due diligence or
14 by one acting under similar circumstances. Plaintiff's failure to mitigate is a bar to
15 recovery under the Complaint.

16 **Eighth Affirmative Defense**

17 (Estoppel)

18 The Complaint and each of its purported claims for relief are barred by the doctrine
19 of estoppel.

20 **Ninth Affirmative Defense**

21 (Laches)

22 The Complaint and each of its purported claims for relief are barred by the doctrine
23 of laches.

24 **Tenth Affirmative Defense**

25 (Unclean Hands)

26 The Complaint and each of its purported claims for relief are barred by the doctrine
27 of unclean hands. Plaintiff's Complaint does not contend that the subject debt is not
28 owed, nor that the subject debt has been satisfied. As such, Plaintiff is in breach of the

1 agreement with the credit originator, and but for the breach of that agreement Defendant
2 would not have communicated with Plaintiff.

Eleventh Affirmative Defense

(Waiver)

5 The Complaint and each of its purported claims for relief are barred by the doctrine
6 of waiver.

Twelfth Affirmative Defense

(Good Faith)

9 Defendant alleges that at all times it acted in good faith and with good cause. The
10 conduct of Defendant was within the reasonable expectations of the parties and was
11 reasonably related to Defendant's legitimate business interests upon the basis of
12 reasonable factors.

Thirteenth Affirmative Defense

(Failure to State a Claim)

15 The Complaint, fails to state facts sufficient to constitute a cause of action against
16 Defendant relative to the content of the alleged communications and further fails to state
17 facts sufficient to entitle Plaintiff to the relief sought, or to any other relief whatsoever,
18 from Defendant.

Fifteenth Affirmative Defense

(Joinder)

21 Defendant is informed and believes and thereon alleges that any purported
22 damages allegedly suffered by Plaintiffs are the result of the acts or omissions of third
23 persons over whom Defendant had neither control nor responsibility, and whom Plaintiff
24 has failed to name in this action.

Sixteenth Affirmative Defense

(Reserved Affirmative Defenses)

Defendant alleges that the Complaint does not describe the alleged actions with sufficient particularity to permit it to ascertain what other defenses may exist at this time.

1 Defendant therefore reserves the right to assert all defenses that may pertain to the
2 Complaint as the facts of the case are discovered.

3 **WHEREFORE**, Defendant prays as follows:

- 4 1. Plaintiff takes nothing by way of her Complaint herein and that this action is
5 dismissed in its entirety;
- 6 2. For Defendant's attorney's fees and costs incurred herein;
- 7 3. For such other relief as the Court may deem just and proper.

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9 DATED: May 15, 2013

FOLEY & MANSFIELD, PLLP

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11 By: *s/ Sean P. Flynn*
12 Sean P. Flynn
13 M. Amadea Groseclose
14 Attorneys for Defendant
RECEIVABLES PERFORMANCE
MANAGEMENT, LLC

1 **DEMAND FOR JURY TRIAL**
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3 PLEASE TAKE NOTICE that defendant RECEIVABLES PERFORMANCE
4 MANAGEMENT, LLC hereby demands a trial by jury in this action.
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6 DATED: May 15, 2013

FOLEY & MANSFIELD, PLLP

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8 By: *s/ Sean P. Flynn* _____
9 Sean P. Flynn
10 M. Amadea Groseclose
11 Attorneys for Defendant
12 **RECEIVABLES PERFORMANCE**
13 **MANAGEMENT, LLC**